

Comments on draft Environmental Justice Analysis document.

Letter ID	Commenter Name	Commenter Org.	Text	Issues Addressed:	Narrative/Change in Analysis
00036	Ex. 6 Personal Privacy (PP)	Individual	<p>1. Introduction</p> <p>In April of 2017, the US Environmental Protection Agency (EPA) released draft permits for uranium recovery and wastewater disposal associated with the proposed Dewey-Burdock in-situ recovery project. In accordance with EPA policy and Executive Order 12898, the EPA also conducted an environmental justice (EJ) analysis concerning the mine’s possible environmental or health impacts on minority and low-income communities. The report finds that “the city of Edgemont is a potentially overburdened community” based on its low-income status and accumulation of environmental health risks, but that the Dewey-Burdock project is not expected to meaningfully change this status. The EPA also recognizes the need for consultation with tribal communities for whom “the Black Hills is an area of cultural importance,” although it recognizes that consultation activities are not a part of the EJ analysis. Finally, the EJ analysis mentions several times that the EPA will conduct “enhanced public participation and outreach activities” given that UIC wells have the “potential for significant public health or environmental impacts.” These included several public comment sessions in the Black Hills area. We find the EJ analysis deficient in several connected ways. First, the analysis appears at odds with broad public understandings of environmental justice, scholarly expansions on public understandings, as well as the narrower, pragmatic definition of EJ used by the EPA. Second, although the draft EJ analysis and the EPA’s actions seem to suggest an understanding that the project might affect Lakota and other tribal relationships with the Black Hills, the draft EJ analysis as written does not allow the EPA to acknowledge the possible burden the proposed project might place on the culture, religion, or health of Native peoples.</p>	<p>City of Edgemont – No change to low income status nor environmental health risks</p> <p>Tribal Communities Consultation – Not part of EJ analysis</p> <p>Enhanced Public Participation – UIC wells have potential for significant public health or environmental impacts</p> <p>EJ analysis deficient - At odds with broad public understanding of EJ as well as narrower, pragmatic definition used by EPA</p> <p>Impact on Lakota and other Tribal relationships with Black hills the Draft EJ analysis does not acknowledge the possible burden on culture, religion or health of Native Peoples.</p>	Ex. 5 Deliberative Process (DP)
00036	Ex. 6 Personal Privacy (PP)	Individual	<p>2. Defining environmental justice</p> <p>The concept and practice of environmental justice emerges directly from the activism of people of color and Native peoples directly affected by extractive industries, refineries and processing plants, and hazardous waste repositories. In fact, much of this activism was responding to uranium mining, processing, waste disposal, and nuclear weapons testing. In South Dakota, Native and non-Native groups alike devoted many years in the 1970s and 80s to proving that drinking water on the Pine Ridge and Cheyenne River reserves had been contaminated by past mining activities, resulting in undue health burdens for their people. The organization Women of All Red Nations (WARN) conducted many of the first</p>		

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		<p>drinking water tests on South Dakota reservations and fought for environmental justice on a national and international scale (LaDuke and Churchill 1985). The Indigenous Environmental Network (IEN) emerged to help facilitate the extremely influential 1991 People of Color Environmental Justice Summit, which directly led to Executive Order 12898, signed by President Clinton in 1994.</p> <p>Based on EO 12898, the EPA defines environmental justice in the following way.</p> <p>“Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.</p> <p>Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.”</p> <p>The EPA goes on to define the meaning of meaningful involvement:</p> <ul style="list-style-type: none">• People have an opportunity to participate in decisions about activities that may affect their environment and/or health• The public's contribution can influence the regulatory agency's decision• Community concerns will be considered in the decision making process• Decision makers will seek out and facilitate the involvement of those potentially affected <p>We will return to this definition in a moment, but first it is important to contrast these principles originally agreed upon at the 1991 Summit (which can be viewed in full at [HYPERLINK "http://www.ejnet.org/ej/principles.html"]). These include, most notably,</p> <p>4) Environmental Justice calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food.</p> <p>7) Environmental Justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation.</p> <p>11) Environmental Justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination.</p> <p>In contrast to the EPA's definition of environmental justice, the 1991 Summit identified the specificity of particular activities (e.g., uranium mining) and the specificity of particular communities and their relations with land and law (e.g., Native peoples) as fundamental to achieving environmental justice. Here, environmental justice did not simply mean the absence of harms or equality of distribution of risks, but also the proactive recognition of historic relationships with specific land and environments as well as industries.</p>	<p>Environmental Justice</p> <p>Environmental Justice calls for universal protection from extraction...of nuclear testing...</p> <p>Special Legal and natural relationship to Native Peoples. EJ must recognize a special legal and natural relationship to Native Peoples through treaties, agreements, compacts and covenants affirming sovereignty and self-determination.</p>	<p>Ex. 5 Deliberative Process (DP)</p>
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00036	<div>Ex. 6 Personal Privacy (PP)</div>	Individual	<p>3. Native American perspectives on environmental justice</p> <p>Environmental justice scholarship and activism features various assertions of (and mobilizations against) environmental (in)justice in the US from the perspectives of Native peoples, ranging from industrial pollution and contamination (Johnston, Dawson, and Madsen 2010; Voyles 2015) to hydroelectric power (Howe and TallBear 2006; Lawson 2009) and oil and natural gas development (Estes 2014; Allard 2016) to the threats which climate change poses to traditional food sources and ecosystems (Doerfler, cited in Scheman 2012; Dittmer 2013; Whyte 2017; Wildcat 2009). Importantly, nearly all Native-led engagements with questions of environmental justice are grounded in claims and relationships to land, some aspects of which are legally enshrined by treaties with the US government. Many scholars and activists, including Tsosie (1996; 2009), Whyte (2013), and various Lakota, Dakota, and otherwise-affiliated Native individuals who testified during the EPA public comment sessions, have noted that their communities’ complexly reciprocal relationships with the land escape capture by the narrowly defined terms of federal treaties. Despite this important caveat, treaties remain an important ground from which Native individuals and communities have articulated their visions for environmental justice. This emphasis on land, water, and treaty rights extends to Lakota articulations of environmental justice. Contemporary Lakota concerns with the impacts of proposed uranium mining activities, including the proposed Dewey-Burdock project, are grounded in a longer history of negative fallout from and concerted opposition against harmful mining projects in the Black Hills region.</p> <p>[...]</p> <p>It wasn’t until the 1970s that the health effects of uranium mining began to be noticed by people in the region. A South Dakota Department of Health study in 1976 already found elevated cancer rates around Edgemont (Tupper 2015). Downstream on the Pine Ridge reservation, WARN was conducting the first water tests, which found elevated levels of radioactive elements consistent with</p>	<p>Native relationship with the land</p> <p>Natives relationships with the land in relationship to Treaties-communities’ complex reciprocal relationships with the land escape capture by Treaties</p>	<div>Ex. 5 Deliberative Process (DP)</div>

			<p>toxicity from uranium mining. It would be more than 25 years before an alternative water source was finally in place. Throughout the 1980s, WARN, the Black Hills Alliance, Defenders of the Black Hills, and other Native and non-Native led groups sought to connect treaty rights to environmental justice in a meaningful way based on their histories of contamination, activism, and experience with the EPA and other federal institutions as well as private corporations.</p> <p>Since the initial wave of activism in the 1980s, groups such as Owe Aku and the Black Hills Clean Water Alliance have been working to amplify both Native and non-Native concerns related to uranium mining into advocacy for clean water. Just as these groups' organizing and advocacy strategies are built upon previous iterations of the environmental justice movement in the Black Hills, so too are their concerns with potential environmental harm from the proposed Dewey-Burdock project grounded in and made more significant by past and ongoing experiences of contamination from historic uranium mining activities. The cumulative effects of past uranium mining, which remain in South Dakotan waterways, bodies, communities today, have been repeatedly cited by the public as one of the most meaningful reasons that contemporary uranium mining is seen as an environmental injustice. The lack of understanding of this history of local and regional environmental justice movements and their connection with the fight for treaty rights (Ostler 2011) is one of the most troubling aspects of the EPA's draft EJ analysis.</p>	<p>Cumulative effects Cumulative effects of past uranium mining and effects today, Treaty Right Issue</p>	<div>Ex. 5 Deliberative Process (DP)</div>
00036	<div>Ex. 6 Personal Privacy (PP)</div>	Individual	<p>5. Conclusion</p> <p>Outlined above is a broad understanding of the environmental justice concerns the Dewey-Burdock raises for two scholars of environmental politics in South Dakota. Our expertise comes from being students and scholars learning from the individuals and organizations expressing concerns about the Dewey-Burdock project and from a commitment to do our part in amplifying and translating these concerns into concepts recognizable to the EPA. We have attempted to enhance the picture of what environmental justice could look like if the concerns of Lakota and other tribal communities were properly recognized as part of the permitting process. Our brief outline is insufficient to be counted as an environmental justice analysis in its own right; we only seek to highlight the striking absences within the EPA's draft EJ analysis.</p> <p>With this in mind, we do not see how the proposed permits for the Dewey-Burdock project can be issued and retain any valence of environmental justice. In addressing some of the problems highlighted above, the EPA has a chance to set a precedent for working with Native communities in a manner more consistent with the goal of creating environmental justice.</p> <p>Works Cited</p>	<p>Tribal communities concerns not properly recognized as part of permitting process.</p> <p>Lakota and other tribal communities were not properly recognized as part of the permitting process.</p>	<div>Ex. 5 Deliberative Process (DP)</div>

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00527	Lilias Jones Jarding, Ph.D.	Clean Water Alliance	<p>ENVIRONMENTAL JUSTICE AND NATIONAL HISTORIC PRESERVATION ACT ISSUES</p> <p>The issues involving the EPA’s DRAFT Environmental Justice (EJ) Analysis and its National Historic Preservation Act (NHPA) report are linked and will be discussed briefly in this section.</p> <p>The primary shortcoming of the DRAFT Environmental Justice Analysis is its limitation to a 20-mile radius. While it is true that Edgemont qualifies for impacted status, the 20-mile limitation effectively eliminates people who live downstream and on the Lakota reservations and who are impacted by the destruction of treaty, historical, and cultural sites. Note that both EJ and NHPA analysis should have been completed as part of a full tribal government-to-government consultation before the draft permits or aquifer exemption were released. There has, at this point, already been a violation of trust by the EPA that will be difficult or impossible to remedy.</p> <p>[...]</p> <p>The EJ analysis includes Table 12, which purports to list “Additional State and Federal Permits Powertech is required to obtain” (p. 24). This Table is misleading in several ways that make it look like the company faces few hurdles. First, the table does not include the Clean Air Act permit that the EPA says is required. Second, it does not indicate the current status of either the state water appropriation permits or the state Groundwater Discharge Plan. These permits have not just been “recommended for approval”; they have been put on hold for several years. And third, the NRC’s Source Material License is under appeal in federal court, and this is not mentioned.</p> <p>The EPA also states conclusions about the mining process and its outcomes that are not supported by experience or science in the EJ analysis. This is discussed elsewhere in these comments.</p> <p>The EJ analysis mentions that the public in the White Mesa mill area, where the company wants to take its 11e wastes, is 49% American Indian and Native Alaskan. After making this statement, the agency fails to do an EJ analysis of that site, simply saying that the Dewey-Burdock waste would be a small percentage of the waste at the site. This begs the question – What are the impacts of the mill on the nearly half of the population of the area that should be protected under EJ guidelines? There should at least be a reference to a complete analysis of this issue and, if one doesn’t exist yet, it should be done as part of the Dewey-Burdock process and before further action is taken by the EPA.</p>	<p>20-mile radius is shortcoming in EJ Analysis</p> <p>Limitation of EJ Analysis to 20-mile radius. 20-mile radius effectively eliminates people who live downstream.</p> <p>Treaty violation because Consultation was not completed prior to issuance of draft permits.</p> <p>Violation of Treaty because tribal consultation was not completed before the draft permits were released.</p> <p>Other Permits</p> <p>List of other permits required is not complete.</p> <p>White Mesa Mill Area not included in EJ Analysis</p> <p>Ex. 5 Deliberative Process (DP)</p>	<p>Ex. 5 Deliberative Process (DP)</p>

00528	David Frankel	Aligning for Responsible Mining	<p>8. COMMENTS ON THE DRAFT ENVIRONMENTAL JUSTICE (EJ) ANALYSIS FOR THE DEWEY-BURDOCK UIC PERMITTING ACTIONS</p> <p>The Town of Buffalo Gap, SD, with a history of high uranium levels in the water (higher than found in Edgemont, SD) should be included in the EJ analysis to the same extent as Edgemont, SD.</p> <p>[ATTACHMENT: “Location of the Study Area, which includes the Dewey-Burdock Project Area and a 20-mile buffer measured from the approximate Project Area Boundary, and the Edgemont Area, which includes a 5-mile buffer around the City of Edgemont” (image)]</p> <p>Section 1.3 of the EJ Analysis states that the EPA used a 20-mile buffer zone measured from the location of the Dewey-Burdock Project Area Boundary without considering the flows of water or related aquifers that impact areas farther away such as Buffalo Gap, SD. The EPA found that ‘Based on the preliminary screening processes, the City of Edgemont, South Dakota was identified as a community for which the EPA should conduct additional evaluation to determine if the area is a potentially overburdened community as discussed in Section 2.5.”</p> <p>[ATTACHMENT: “Drinking Water Systems Radiological Chemical Data Proximity of Cheyenne River” (image)]</p> <p>The Town of Buffalo Gap, SD, shown in close proximity to the Project Area Boundary, should be included in the EJ Analysis. Like Edgemont, SD, the Town of Buffalo Gap, SD, is a potentially overburdened community.</p> <p>Section 11.0 of the EJ Analysis describes additional, enhanced public participation and outreach requirements that should be made available to the residents of Buffalo Gap, SD.</p> <p>11.0 Conclusions</p> <p>The screening process using EJSCREEN identifies the City of Edgemont as a potentially overburdened community. Thus, the EPA has determined that it is appropriate to conduct enhanced public participation and outreach activities with the aim of encouraging public involvement in the permitting process. The EPA is exercising its discretion to hold a number of public informational meetings and public hearings following issuance of the draft UIC permits and to allow for a longer comment period than that required by regulation. The EPA also proposes to implement appropriate permit requirements intended to</p>	Ex. 5 Deliberative Process (DP)	Ex. 5 Deliberative Process (DP)

			<p>ensure protection of the underground sources of drinking water and to facilitate public notification and access to information in the event of noncompliance with permit requirements. The EPA will continue to assess potential EJ considerations and is inviting review and comment on this draft EJ analysis.</p> <p>[ATTACHMENT: "00528_DavidFrankelARMCommentsEPADBJune2017-7.0final.pdf"]</p> <p>Buffalo Gap, SD tested 500% higher for Uranium in its water than Edgemont, SD. Based on the foregoing, the Town of Buffalo Gap, SD should be included in the EJ Analysis.</p> <p>For the foregoing reasons, and based on the foregoing comments, the undersigned hereby object to the issuance of the proposed permits to Powertech.</p>		
00565	Nick Tilsen	Thunder Valley Community Development Corporation	<p>Besides these general concerns, I would like to discuss several issues with the draft permits. The first is that the Environmental Justice (EJ) section does not adequately consider the impacts of the proposed mine and deep disposal wells on Lakota people. The area covered in considering EJ issues is inadequate, as they include no reservation lands. Environmental Justice concerns should clearly include the Pine Ridge and Cheyenne River Reservations, which will be directly impacted if this project is permitted, as they are downstream.</p>	<p>EJ Analysis inadequate when considering impacts on Lakota People.</p> <p>EJ analysis does not consider the impacts of the proposed mine and deep disposal wells on Lakota people. Should include the Pine Ridge and Cheyenne River Reservations, downstream from site.</p>	Ex. 5 Deliberative Process (DP)
07461 (5/9 Rapid City hearing)	Ex. 6 Personal Privacy (PP)	Individual	<p>I want to support the comments from the two University of Minnesota students on your analysis of environmental justice. You need to look at how your Agency's actions, your permits, your inactions are affecting or how they are not considering an already marginalized people.</p>	<p>EJ Analysis does not consider marginalized people.</p> <p>EJ Analysis does not consider an already marginalized people.</p>	
07461 (5/9 Rapid City hearing)		Individual	<p>JULIE SANTELLA: Hi. My name is Julie Santella. I'm a graduate student in geography at the University of Minnesota in Minneapolis. I grew up in Sioux Falls, eastern part of the state. And I am humbled by all the people who have spoken yesterday and today, and a lot of what I am going to say is to reiterate what other folks have said.</p>		

		<p>And while the stated focus of these public hearings is on these draft permits and the exemption from the Safe Drinking Water Act for parts of the Inyan Kara aquifer, I want to focus my comments on another draft document being presented, the so-called Environmental Justice Analysis for this proposed project.</p> <p>I'm troubled by the way that public input on the EPA's EJ and tribal consultation processes has been underemphasized here when, in fact, these proposed permits and proposed aquifer exemption are questions of environmental justice in really important ways, and these considerations of environmental justice or injustice ought not to be bracketed off from the rest of the project approval process.</p> <p>So my concerns with the EJ process are many. First, as many people have been noting yesterday and today, the proposed project area as well as this place where we are meeting today is contained within treaty territory, as defined by the 1851 and 1868 Fort Laramie Treaties.</p> <p>And therefore, when developing the National Historic Preservation Act draft compliance and Environmental Justice draft analysis documents, the EPA's analysis is already flawed in saying that the site in question is not located on tribal lands.</p> <p>[...]</p> <p>So even if I agreed with the bounded nature of the EPA's considerations with regard to environmental justice, considering only a 20-mile buffer zone around the proposed project area, even within those bounds I would consider its environmental justice process inadequate. But I don't agree with those boundaries.</p> <p>And I'm concerned about the way that this analysis for environmental justice fails to account for potential impacts of this project beyond these geographic boundaries, and also the failure to recognize the way the environmental follow-up in this project stands to build upon layers of historic environmental injustice experienced in this region.</p> <p>[...]</p> <p>I am no expert when it comes to geology, and I'm hopeful that you will listen to the many scientists, hydrologists, geologists who are working hard to understand the geology of this region better and have reason to question the safety of this proposed project and its -- and its ramifications for communities beyond this bounded 20-mile area.</p> <p>But I'm also concerned about the EPA's failure to recognize that the communities who stand to be harmed by this project have experienced significant historic injustice when it comes to land and resource development. Even if we look only to past uranium projects, we find a more nuanced understanding of injustice in this region.</p>	<p>EJ and tribal consultation have been underemphasized here.</p> <p>Treaty issues NHPA and EJ is incorrect because we say the site is not located on tribal lands.</p> <p>20-mile Buffer 20 mile buffer zone is not adequate EJ Analysis fails to account for potential impacts beyond the 20 mile buffer. Hydrologists, scientists and geologists are ignored about the 20 mile buffer.</p> <p>Historic Injustice Ignored EJ analysis fails to recognize significant historic injustice Cheyenne River is polluted as a result of past mining activities including downstream communities. Colonial dispossession of native lands and resources should be considered at layers of injustice.</p>	<div>Ex. 5 Deliberative Process (DP)</div>
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			<p>Just yesterday we heard further confirmation that the Cheyenne River is in fact polluted as a result of past mining activities with impacts for downstream communities, including Pine Ridge, Cheyenne River, and other Native communities.</p> <p>[...]</p> <p>I'm also not -- no expert on lived experience of these layers of injustices, and this is not just as a result of uranium mining, but of land theft, logging activities, other mining operations that all over have been, continued to be made possible by colonial dispossession of native lands and resources.</p> <p>And my hope is that you will listen to all these people gathered here today, explaining these layered impacts of these projects on their communities. I hope that you will listen when they tell you that your mechanisms for tribal consultation are inadequate at best and insulting at worst. And I hope you will rethink your definition of environmental justice.</p>		
07461 (5/9 Rapid City hearing)	Ex. 6 Personal Privacy (PP)	Individual	<p>KAI BOSWORTH: Okay. Thanks a lot for allowing me to speak today. My name is Kai Bosworth. I'm also a graduate student in the Department of Geography at the University of Minnesota. I hold an M.A. in Environmental Studies with an interdisciplinary focus on Environmental Justice from Macalester College, as well as a B.A. from the University of Minnesota. And I grew up in Spearfish, South Dakota.</p> <p>So today I also want to make comments with respect to the draft Environmental Justice Analysis that the EPA produced for this project.</p> <p>Environmental justice is defined by the EPA as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."</p> <p>But the concept and definition of environmental justice were developed not by the EPA itself, but by social movements led by Native nations, black activists, migrants, poor people, and women, namely the people standing behind me here today.</p> <p>Environmental justice was institutionalized via executive order in 1994 and '95 and developed and expanded via agency plans. But while the EPA's definition of environmental justice has narrowed significantly, ours, for those social movements, has expanded drastically.</p> <p>The two parts to the EPA's Analysis of the Dewey-Burdock Project on Environmental Justice primarily concern first the assessment of the project area, which is defined as 20 miles surrounding the Dewey-Burdock project itself, and even within this area that includes the community of Edgemont, the EPA concludes that there are, in fact, communities that qualify as overburdened and</p>		

		<p>face -- have significant health impacts related to past environmental activities on the land.</p> <p>But mostly what I want to talk about today is whether participation and consultation are adequate to the EPA's stated standards of fair treatment and meaningful involvement of the folks who have gathered here today.</p> <p>And so I guess my question, my main question is why limit environmental justice analysis to these communities, the 20 miles surrounding Dewey-Burdock, when historically and legally, we all know that this is tribal land and, at the very least, that the project does indeed impact Native nations.</p> <p>The EPA, it seems to me, implicitly agrees with this sentiment for in the EJ analysis, in the second part, they attempt -- they state that they attempt to take enhanced measures to collect input from Native peoples, including, they argue, these very public participation meetings today which were located, supposedly, closer to tribal communities so that -- to facilitate their appearance here today.</p> <p>Many speakers have already commented on consultation, and I think that they are far more qualified to do so than I. So I just want to use my remaining time to comment on public participation in environmental review.</p> <p>And I think what we need to ask ourselves is -- and the EPA, is whether participation today qualifies as meaningful. What is a meaningful contribution and comment to this project?</p> <p>The gracious EPA agents are at pains to tell us that we -- that our comments are being listened to and heard and will be responded to in the final permits that they will grant, but we all know that actions speak louder than words.</p> <p>And the inadequacy of the EPA analysis could be fixed based on our comments that we give today, but I hope you understand our extreme skepticism that it will be. For example, after the head of the EPA's EJ division, Mustafa Ali, resigned two months ago and indicated that the department's future could be at risk under the current administration.</p> <p>So to me and many EJ scholars, what meaningful commitment and -- or, comment and participation might do would recognize the participants who are speaking here today, especially those who come from Native nations, as the experts on the region, its water and its land.</p> <p>And possible conditions that you could all attach to future permitting that would create meaningful participation would recognize this: By expending -- expanding the spatial and historical parameters of the Environmental Justice Analysis beyond the immediate 20-mile radius; to include the long history of dispossession, broken treaties, and contamination of Native land and bodies.</p> <p>This would recognize that what justice means is something far more than what goes on in this five-minute speech or anything like that, but much longer, a process of redress and reconciliation.</p>	<p>Participation and consultation are both inadequate.</p> <p>20-mile Buffer 20 mile buffer is inadequate. Meaningful participation should be expanded spatially and historically.</p> <p>Consultation is inadequate</p>	<p>Ex. 5 Deliberative Process (DP)</p>
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